BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR BOARD OF CONTROL DECISION ON: Statues 1980, Chapter 1143 Claim No. 3929 Directed by Statutes 2004, Chapter 227, Sections 109-110 (Sen. Bill No. 1102) Effective August 16, 2004	Case No. 04-RL-3929-05 ***Regional Housing Needs Determination-Councils of Governments*** **OPENING BRIEF OF SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS** HEARING DATE: March 31, 2005

I. INTRODUCTION

Recently, the Southern California Association of Governments ("SCAG") received a copy of a notice announcing these proceedings. The Notice set forth a process, including a briefing schedule. Pursuant to the schedule, less than thirty (30) days was provided to file opening briefs. In light of the limited time allowed to prepare briefs on these important and complicated issues, SCAG respectfully reserves its right to submit supplemental information.

To address the affordable housing shortage in California, the California Legislature developed the Regional Housing Needs Assessment ("RHNA") process to allocate housing need to cities and counties throughout California. Cal. Govt. Code § 65580 *et seq.* (Chapter 1143, Statutes of 1980 (AB 2853, Roos)) ("Chapter 1143"). Each local jurisdiction is assigned a "fair share" of

housing through a process administered by regional councils of government ("COGs").

Chapter 1143 was passed after SB 90, the constitutional amendment which requires mandate reimbursements for state-required activities. See Cal. Const. Art. XIII B § 6. The state, is therefore required to reimburse local governments for the cost of implementation of this regional planning mandate, and in fact, has reimbursed local governments for this cost since they began implementing the RHNA process.

In the last few years, California has faced a budget shortfall, and as a result, since fiscal year 2002-03, the state has appropriated only $1,000 each year for the RHNA process, in effect passing the costs of reimbursements to local governments. In order to avoid having to reimburse local governments for some mandated costs, the Legislature passed SB 1102, a general government omnibus Budget trailer bill which the Governor signed on August 16, 2004. SB 1102 made optional a variety of existing statutory requirements including the appeals process for local jurisdictions relating to their share of the regional housing need, which had previously been a mandated process. See Govt. Code § 65584.2.

In addition, the Legislature enacted Section 65584.1 of the Government Code which authorizes COGs to "charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article." Govt. Code § 65584.1. According to the

Legislature, "[t]his section is declaratory of existing law." Id.

Although the Commission on State Mandates (the "Commission") cannot find mandated costs where a local agency has the authority to levy fees, whether COGs may actually impose this fee is an unresolved issue. Until this issue is resolved, it is premature for the Commission to determine whether Section 65584.1 affects the reimbursability of the costs associated with the RHNA process. To find that Section 65584.1 precludes COGs as well as cities and counties from being reimbursed by the state for a clear state mandate assumes the validity of Section 65584.1.

Moreover, despite the fact that this "authorization" to charge fees purportedly allows COGs to collect fees from "local governments" to pay for the RHNA process, any such collection would amount to COGs collecting from themselves. COGs are joint powers agencies established pursuant to California Government Code Section 6500 *et seq.* As such, their members comprise the joint powers agencies, and Section 65584.1 effectively allows COGs to collect fees from their members. Collection from their members hardly results in any sort of reimbursement to the COGs. The COGs, in essence, would be paying for the RHNA process themselves. This runs counter to the well-established policy underlying SB 90, i.e., that states cannot shift the costs of providing public services to local agencies.

II. BACKGROUND

SCAG is the largest of nearly 700 councils of government in the United States. It is a Joint Powers Agency established

pursuant to California Government Code Section 6500 *et seq.* As the federally-designated Metropolitan Planning Organization ("MPO") for Southern California pursuant to 23 U.S.C. 134(a) and (g) and 49 U.S.C. § 5303(f), SCAG is mandated by federal law to research and prepare plans for transportation, growth management, hazardous waste management, and air quality for the counties of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Imperial. This region encompasses more than 38,000 square miles and a population exceeding 15 million persons.

Under state law, California must conduct a state and regional housing needs assessment which determines projected housing construction needs for the region based on population projections produced by the State Department of Finance and the regional population forecasts developed by SCAG and used in preparing Regional Transportation Plans. Govt. Code § 65584.

Pursuant to California Government Code Section 65584, SCAG must allocate shares of the regional housing need to cities and counties within the region, and allocate shares of subregional housing need to subregional agencies that choose to accept the delegation of responsibility from SCAG. See Govt. Code § 65584.

SCAG has submitted substantial claims for reimbursement for its RHNA duties since the mandate began in 1983, and it has been reimbursed pursuant to SB 90.

III. ARE COUNCILS OF GOVERNMENTS ELIGIBLE CLAIMANTS UNDER ARTICLE XIII B, SECTION 6 OF THE CALIFORNIA CONSTITUTION?

COGs are indeed eligible claimants under SB 90 as evidenced not only by the fact that it has successfully filed claims in the

past, but also, the Mandated Cost Manual for Local Agencies issued by the State Controller specifically states: "Any city, county, city and county, or council of governments incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs." See Exhibit A to Declaration of Patricia J. Chen in Support of Opening Brief of Southern California ("Chen Declaration") at 3.

Furthermore, as the Board of Control found in developing its Parameters and Guidelines for the Regional Housing Need Determinations:

> "ELIGIBLE CLAIMANTS: ALL COUNCILS OF GOVERNMENTS
>
> Councils of governments organized under the Joint Exercise of Powers Act are "local agencies" within the meaning of Section 2211 of the Revenue and Taxation Code. Section 2211 of the Revenue and Taxation Code was amended by the enactment of A[B] 20 Chapter 242, Statutes of 1981), which took effect July 21, 1981. . . . Consequently, COGs are eligible to file for reimbursement of State-mandated costs related to determining existing and projected regional housing needs, determining local shares of such needs, and accepting or rejecting any local revisions to shares of regional housing needs."

Administrative Record ("AR") at Sec. 5, Draft Parameters and Guidelines Regional Housing Need Determinations. Since the amendment in 1981, Section 2211 of the Revenue and Taxation Code has not changed. Thus, there is no reason why the Commission should revisit its prior finding.[1]

[1] Note that the amendments to SB 90 resulting from Proposition 1A ("Prop. 1A") do not appear to affect COGs' eligibility for reimbursement. In fact, Prop. 1A allows the Legislature to suspend the operation of a mandate if the state cannot appropriate the mandated costs in its annual Budget Act.

IV. DOES STATUTE 1980, CHAPTER 1143 IMPOSE A NEW PROGRAM OR HIGHER LEVEL OF SERVICE WITHIN AN EXISTING PROGRAM ON COUNCILS OF GOVERNMENTS WITHIN THE MEANING OF ARTICLE XIII B, SECTION 6 AND COSTS MANDATED BY THE STATE PURSUANT TO SECTION 17514 OF THE GOVERNMENT CODE

As the Board of Control found, Chapter 1143 does impose a new program within the meaning of SB 90. See AR, Section 4 at 45. Prior to the enactment of Section 65584, state law did not require COGs to determine a regional housing need, or to determine local government shares of such need. Since the Board of Control found that Chapter 1143 imposed a new program, the language of Section 65584 has changed. However, as it did then, the current statute continues to mandate that each COG "shall determine the existing and projected housing need for its region . . . [and] shall determine the share for each city or county consistent with the criteria of this subdivision . . . ." Govt. Code § 65584(a). Therefore, Chapter 1143 still imposes a new program within the meaning of SB 90.[2]

V. DOES GOVERNMENT CODE SECTION 17556, INCLUDING THE EXISTENCE OF FEE AUTHORITY PRECLUDE THE COMMISSION FROM FINDING THAT ANY OF THE STATUTORY PROVISIONS IMPOSE COSTS MANDATED BY THE STATE?

Since the Board's decision, Legislature enacted Section 65584.1 of the Government Code which authorizes COGs to "charge a fee to local governments to cover the projected reasonable,

[2] SCAG acknowledges that changes have been made to Chapter 1143, some of which may have resulted in elements of the RHNA process being unreimburseable, e.g., it is optional for localities to participate in appeals (Govt. Code § 65584.2), however, the language of the statute concerning COGs obligations remain mandatory.

actual costs of the council in distributing regional housing needs." However, Section 17556 of the Government Code states:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that. . .
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At first blush, it may appear that Section 65584.1 precludes the Commission from finding that the RHNA costs are "costs mandated by the state." This assumes that COGs may indeed levy fees on local governments, but this issue has not yet been resolved. Indeed, the League of California Cities has asserted that such a fee would be considered an unconstitutional local tax assessed for a state purpose. See Letter dated July 21, 2004 from Daniel Carrigg to Assembly Member Alan Lowenthal et al., attached as Exhibit B to Chen Declaration.

Furthermore, if COGs, as joint powers agencies, charge their members fees, they would essentially be charging themselves the RHNA costs. SB 90, however, "was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of restrictions on the taxing and spending power of the local entities." San Diego Unified School District v. Commission on State Mandates, 33 Cal.4th 859, 875 (2004) (quoting County of Los Angeles v. State of California, 43 Cal.3d 46, 56-57 (1987)); see also Redevelopment Agency of the City of San Marcos v. California Commission on State Mandates, 55

Cal.App.4th 976, 985 (1997) ("A central purpose of section 6 is to prevent the state's transfer of the cost of government from itself to the local level.").

Finally, according to Section 65584.1, "[t]his section is declaratory of existing law." The Commission has reimbursed SCAG for its RHNA costs in the past even in light of SCAG's purported authority to assess fees. The fact that the Legislature has now chosen to explicitly set forth the ability of COGs to exact fees should have no bearing on the Commission's authority to reimburse COGs for their costs in implementing the RHNA.

VI. HAVE FUNDS BEEN APPROPRIATED FOR THIS PROGRAM (E.G., STATE BUDGET) OR ARE THERE ANY OTHER SOURCE OF FUNDING AVAILABLE? IF SO, WHAT IS THE SOURCE?

As discussed above, in the 2002-03 and 2003-04 Budget Acts, the state appropriated only $1,000 for the RHNA process, in effect passing the costs of reimbursements to local governments. See Analysis of the 2003-04 Budget Bill, Legislative Analyst's Office, attached as Exhibit C to Chen Declaration. To SCAG's knowledge, no other sources of funding are available.

VII. CONCLUSION

For the foregoing reasons, SCAG respectfully requests that the Commission affirm its prior decision that COGs may seek reimbursement for their costs of implementing the RHNA.

Dated: December 1, 2004

FULBRIGHT & JAWORSKI L.L.P.
COLIN LENNARD
PATRICIA J. CHEN

By _____
PATRICIA J. CHEN
Attorneys for Southern California Association of Governments

PROOF OF SERVICE

I, Cynthia Pacheco, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 865 South Figueroa Street, 29th Floor, Los Angeles, California 90017. On December 1, 2004, I served a copy of the within document(s):

Opening Brief of Southern California Association of Governments

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

Eric D. Feller, Esq.
Commission State Mandates
980 9th Street, #300
Sacramento, CA 95814
Eric.feller@csm.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 1, 2004, at Los Angeles, California.

Cynthia Pacheco

Cynthia Pacheco

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR BOARD OF CONTROL DECISION ON: Statues 1980, Chapter 1143 Claim No. 3929 Directed by Statutes 2004, Chapter 227, Sections 109-110 (Sen. Bill No. 1102) Effective August 16, 2004	Case No. 04-RL-3929-05 ***Regional Housing Needs Determination-Councils of Governments*** **DECLARATION OF PATRICIA J. CHEN IN SUPPORT OF OPENING BRIEF OF SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS** HEARING DATE: March 31, 2005

I, Patricia J. Chen, hereby declare as follows:

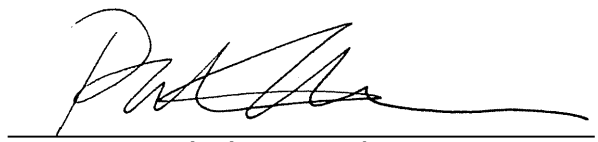
1. I am an attorney at law duly licensed to practice before the courts of the State of California. I am the attorney for Plaintiff Southern California Association of Governments ("SCAG") in this action.

2. Attached hereto as Exhibit "A" are true and correct copies of Chapter 1143/80 of the Mandated Cost Manual for Local Agencies issued by the State Controller (updated September 30, 2003) as well as the claim forms for the Regional Housing Need Determination costs.

3. Attached hereto as Exhibit "B" is a true and correct copy of a letter dated July 21, 2004 from Daniel Carrigg, Legislative Representative,, League of California Cities, to Assembly Member Alan Lowenthal, Chair, Assembly Housing Committee, et al.

4. Attached hereto as Exhibit "C" is a true and correct copy of the Legislative Analyst's Office Analysis of the 2003-2004 Budget Bill.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 1, 2004, at Los Angeles, California.



Patricia J. Chen

EXHIBIT A

MANDATED COST MANUAL FOR LOCAL AGENCIES

STATE OF CALIFORNIA

STEVE WESTLY
STATE CONTROLLER

FOREWORD

The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller's Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, unless otherwise specified, these instructions should not be construed in any manner to be statutes, regulations, or standards.

If you have any questions concerning the enclosed material, write to the address below or call the Local Reimbursements Section at (916) 324-5729, or email to Irsdar@sco.ca.gov.

State Controller's Office
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, **CA** 94250

Prepared by the State Controller's Office
Updated September 30, 2003

REGIONAL HOUSING NEED DETERMINATION

1. Summary of Chapter 1143180

Government Code Sections 65580 through 65589, as added by Chapter 1143, Statutes of 1980, necessitate more detailed requirements for the housing element. Councils of Governments (COG's) are required to determine the existing and projected needs of their regions and each city's and county's share of such needs based upon the following factors:

(a) Market demand for housing

(b) Employment opportunities

(c) Availability of suitable sites and public facilities

(d) Commuting patterns

(e) Type and tenure of housing

(f) Housing needs of farm workers

(g) Desire to avoid impaction of localities with relatively high proportions of lower income households

In addition, cities and counties are required to have provisions in their housing elements for meeting their "appropriate share of the regional demand for housing" as determined by the COG's. When a city or county government revises its share of regional housing needs as determined by their regional COG, the COG shall accept the revision or shall indicate, based upon available data and accepted methodology, why the revision is inconsistent with the regional housing need.

On August 29, 1981, the Board of Control, predecessor to the Commission on State Mandates, determined that Chapter 1143, Statutes of 1980, resulted in state mandated costs that are reimbursable pursuant to Part 7 (commencing with Government Code § 17500) of Division 4 of Title 2.

2. Eligible Claimants

Any city, county, city and county, or council of governments incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

Funds for the payment of mandated cost claims are made available in the state budget, the Mandated Claims Fund, or in special legislation. To determine if funding is available for the current fiscal year refer to the schedule, "Appropriations for State Mandated Cost Programs" in the Annual Claiming Instructions for State Mandated Costs issued in October of each year to city fiscal officers and county auditors.

4. Type of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs *to* be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a) of the Government Code provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds $200 per program per fiscal year.

5. Filing Deadline

A. Estimated Claims **for** Reinstated Program in **1998-99**

Estimated claims must be filed within 120 days from the issuance date of claiming instructions. Accordingly:

Estimated claims for costs to be incurred during the 1998-99 fiscal year must be filed with the State Controller's Office and postmarked by March 30, **1999.** Timely filed estimated claims are paid before late claims. If a payment is received for the estimated claim, a 1998-99 reimbursement claim must be filed by January 15,2000.

B. Annually Thereafter

Refer to the item, "Reimbursable State Mandated Cost Programs," contained in the cover letter for mandated cost programs issued annually in October that identifies the fiscal years for which claims may be filed. If an "x" is shown for the program listed under "19__/19__ Reimbursement Claim," and/or "19__/19__ Estimated Claim," claims may be filed as follows:

(1) An estimated claim filed with the State Controller's Office must be postmarked by January 15 of the fiscal year **in** which the costs will be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file **a** reimbursement claim by January 15 of the following fiscal year. If the local agency fails to file a reimbursement claim, monies received for the estimated claim must be returned to the State. If no estimated claim was filed, the agency may file a reimbursement claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. For information regarding appropriations for reimbursement claims refer to the "Appropriation for State Mandated Cost Programs" in the previous fiscal year's annual claiming instructions.

(2) **A** reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by January 15 following the fiscal year in which the costs will be incurred. If the claim is filed after the deadline but by January 15 of the succeeding fiscal year, the approved claim must be reduced by a late penalty **of** 10%, not to exceed **$1,000.** Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Activities

For each eligible claimant all direct and indirect costs of labor, supplies, contract services, and travel for the following activities only are eligible for reimbursement:

A. Costs Reimbursable to Councils **of** Governments

- Activity **1:** If necessary, adjust data provided by the Department of Housing and Community Development (DHCD) to determine existing and projected housing needs of the region, Coordination of COG's determination of regional housing needs should take place with DHCD.

  Reimbursable Costs: Salaries and benefits of personnel utilized to review and adjust data provided by DHCD.

- Activity **2:** Preparation of a draft plan that distributes regional housing needs to cities and counties within the geographical area of the COG, utilizing data and the factors cited in Government Code Section 65584(a).

  Reimbursable Costs: Salaries and benefits of personnel directly assigned to the preparation of the plan, including professional staff, clerical support and/or professional and consultant services. Supplies used for the preparation of the plan are reimbursable.

- Activity **3:** Conducting of public hearings by the Board of Directors for the purpose of adopting determinations of local shares of regional housing needs. Meetings, briefings, training sessions, seminars, and advisory committees are not reimbursable.

  Reimbursable Costs: Salaries and benefits of personnel involved with conducting hearings (e.g., Executive Director, Program Manager, and Clerical).

  Space: Rental of adequate space in the region for the purpose of conducting the public hearing.

  Supplies: Charts, graphs, stamps, envelopes, and maps used for the purpose of conducting the public hearing.

  Reports: Final plan proposed for adoption.

- Activity **4:** Review of all local government revisions to COG's determined shares of regional housing needs, if any, and acceptance of such revisions or indication that such revisions are inconsistent with regional housing needs within 60 days of local government's revisions.

  Reimbursable Costs: Salaries and benefits of personnel directly assigned to the review and revision process.

- Activity **5:** Claimants may be reimbursed under this section for one iteration of these activities, per required revision.

These costs as described above, must be incurred by the following deadline:

(1) Southern California Association of Governments: June 30, 1999, for the third revision and June 30,2004, for the fourth revision.

(2) San Diego Association of Governments: June 30, 1999, for the third revision, and June 30, 2004, for the fourth revision.

(3) Association of Bay Area Governments: June 30, 2000, for the third revision and June 30, 2005, for the fourth revision.

(4) Council of Fresno County Governments, Kern County Council of Governments, Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 2001, for the third revision, and June 30, 2006, for the fourth revision.

(5) All other Councils of Governments: June 30, 2002, for the third revision and June 30, 2007, for the fourth revision.

Limitations:

(a) Professional staff who are not directly and functionally assigned to the above activities shall not be claimed as direct costs of the program.

(b) Travel expenses to public hearings are reimbursable, except when hearings are held at the regular place of business.

(c) Professional consultant services to provide assistance to the staff in the preparation of the regional housing needs plan are reimbursable.

(d) Materials and supplies such as working maps, charts, graphs, and other essential items that are necessary for use in the preparation of the regional housing need determination and public hearings are reimbursable.

(e) Records of actual and necessary staff time to accomplish the mandate should be maintained and the claim must be based on these records.

B. Costs Reimbursable to Cities and Counties

Cities and counties will be reimbursed for costs incurred in performing certain activities as required by Government Code Section 65583 that are in addition to those specified in the 1971 Housing Element Guidelines issued by **DHCD.**

Costs associated with the following activities are reimbursable:

- Activity **1:** Documentation of the relationship of zoning and public facilities and services to land suitable for residential development as cited in Government Code Section 65583(a)(3). This activity is reimbursable only if it were not documented in the claimant's plan developed pursuant *to* the 1971 Housing Element Guidelines.
- Activity **2:** Collection and tabulation of employment data and the analysis and documentation of the employment trend including its consideration in the housing need projections pursuant to Section 65583(a)(1).
- Activity **3:** Review of the allocation data provided by the Council of Governments or DHCD regarding the locality's share of regional housing needs and if necessary, revision to the claimant's housing elements as a result of the allocation data.
- Activity **4:** Collection and tabulation of data regarding the handicapped and farm workers and the analysis and documentation of their housing needs pursuant to Section 65583(a)(6).
- Activity ***5:*** Collection and tabulation of data regarding energy conservation and **the** analysis and documentation of opportunities for energy conservation with respect to residential development pursuant to Section 65583(a)(7).
- Activity **6:** One-time costs for the documentation of the public participation process pursuant to Section 65583(b)(5).

7. Reimbursement Limitations

A. Cities and counties reimbursable costs for the above activities will be limited (1) **to** conforming to the requirements of Section 65587 and (2) **as a** result of an evaluation pursuant to Section 65588. No city and county or county may receive reimbursement for both costs incurred in adopting the housing element and in making revisions to the housing elements.

B. Any offsetting savings or reimbursement the claimant received from any source including, but not limited to, service fees collected, federal funds, and other state funds as a direct result of this mandate, shall be identified and deducted so only the net local cost is claimed.

8. Claiming Forms **and** Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. **A** claimant may submit a computer generated report in substitution for forms RH-1 and RH-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated **or** reimbursement claims. The State Controller's Office will revise the manual and claim forms **as** necessary. In such instances, new replacement forms will be mailed *to* claimants.

A. Form RH-2, Component/Activity Cost Detail

This form is used to segregate the detailed costs by claim component. A separate form RH-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the mandated functions performed by each employee and specify the actual time spent, the productive hourly rate, and related fringe benefits.

Reimbursement of personnel services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance, and worker's compensation insurance, Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on this mandate.

(2) Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of materials consumed or expended specifically for the purpose of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders, and other documents evidencing the validity of the expenditures.

(3) Contract Services

Give the name(s) of the contractor(s) who performed the services. Describe the activities performed by each named contractor, actual time spent on this mandate, inclusive dates when services were performed, and itemize all costs for services performed. Attach consultant invoices with the claim.

Source documents required to be maintained by the claimant may include, but are not limited to, contracts, invoices, and other documents evidencing the validity of the expenditures.

(4) Travel Expenses

Travel expenses for mileage, per diem, lodging, and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Give the name(s) of the traveler(s), purpose of travel, inclusive travel dates, destination points, and costs.

Source documents required to be maintained by the claimant may include, but are not limited to, receipts, employee travel expense claims, and other documents evidencing the validity of the expenditures.

For audit purposes all supporting documents must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. Such documents shall be made available to the State Controller's Office on request.

B. Form RH-1, Claim Summary

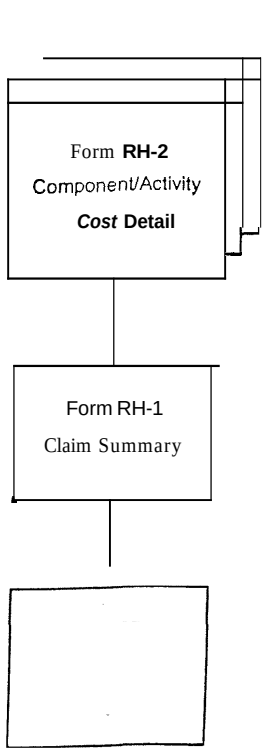
This form is used to summarize direct costs by cost component and compute allowable indirect costs for the mandate. Claim statistics shall identify the amount of work performed during the period for which costs are claimed. Direct costs summarized on this form are derived from form RH-2 and carried forward to form FAM-27.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have its own ICRP.

C. Form **FAM-27,** Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form RH-1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

Illustration of Claim Forms



Form RH-2, Component/Activity Cost Detail

Complete a separate form RH-2 for each cost component for which expenses are claimed.

Councils of Governments

1. Data Review
2. Draft Plan
3. Public Hearings
4. Revision Review
5. Iterated Activities

Cities **and** Counties

1. Residential Development
2. Employment Data
3. Allocation DAta
4. Handicapped and Farm Workers Data
5. Energy Conservation Data
6. Public Participation

CLAIM FOR PAYMENT

Pursuant to Government Code Section 17561

REGIONAL HOUSING NEED DETERMINATION

For State Controller Use Only

(19) Program Number 00055

(20) Date Filed ____/____/____

(21) LRS Input ____/____/____

Program 055

LABEL HERE

(01) Claimant Identification Number

(02) Claimant Name

County of Location

Street Address or P.O. Box Suite

City State Zip Code

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 20___/20___	(12) 20___/20___
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, not to exceed $1,000		(14)
Less: Prior Claim Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

Reimbursement Claim Data	
(22) RH-1, (04)(1)(f)	
(23) RH-1, (04)(2)(f)	
(24) RH-1, (04)(3)(f)	
(25) RH-1, (04)(4)(f)	
(26) RH-1, (04)(5)(f)	
(27) RH-1, (04)(6)(f)	
(28) RH-1, (04)(7)(f)	
(29) RH-1, (04)(8)(f)	
(30) RH-1, (06)	
(31) RH-1, (07)	
(32) RH-1, (09)	
(33) RH-1, (10)	
(34)	
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code §17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer Date

Type or Print Name Title

(38) Name of Contact Person for Claim Telephone Number ( ) - Ext.

E-Mail Address

Form FAM-27 (Revised 09/03)

Program 055	REGIONAL HOUSING NEED DETERMINATION **Certification Claim Form** Instructions	FORM FAM-27

(01) Enter the payee number assigned by the State Controller's Office.

(02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.

(03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.

(04) If filing a combined estimated claim on behatf of districts within the county, enter an "X" in the box on line (04) Combined.

(05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.

(06) Enter the fiscal year in which costs are to be incurred.

(07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form RH-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form.

(08) Enter the same amount as shown on line (07).

(09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing a combined reimbursement claim on behalf of districts within the county, enter an " X " in the box on line (10) Combined.

(11) if filing an amended reimbursement claim. enter an "X " in the box on line (11) Amended.

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form **FAM-27** for each fiscal year.

(13) Enter the amount of the reimbursement claim from form RH-1, line (11). The total claimed amount must exceed $1,000.

(14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims **shall** be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), or $1,000, whichever is less.

(15) If filing a reimbursement claim and a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.

(16) Enter the result of subtracting line **(14)** and line (15) from line (13).

(17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.

(18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.

(19) to **(21)** Leave blank.

(22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines ***(22)*** through (36) for the reimbursement claim, e.g., RH-1, (04)(1)(f), means the information is located on *form* RH-1, **block** (04), line (1), column (f). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. Completion of this data block will expedite the payment process.

(37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)

(38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED ORIGINAL, **AND A COPY OF FORM FAM-27,** WITH ALL OTHER **FORMS AND SUPPORTING DOCUMENTS TO:**

Address, if delivered by U.S. Postal Service:

OFFICE **OF THE** STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, **CA 94250**

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local **Reimbursements Section**
Division **of** Accounting and Reporting
3301 **C** Street, Suite ***500***
Sacramento, CA **95816**

Program 055	MANDATED COSTS REGIONAL HOUSING NEED DETERMINATION CLAIM SUMMARY	FORM RH-1

(01) Claimant	(02) Type of Claim Reimbursement ☐ Estimated ☐	Fiscal Year 20___/20___
(03) Leave blank		

Direct Costs

(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)	(f)
Costs Incurred by Councils of Government	Salaries	Benefits	Supplies	Travel	Contract Services	Total
1. Costs of Third Revision						
2. Costs of Fourth Revision						
***Costs* Incurred by Cities and Counties**						
3. Costs of Activity **1:** Residential Development						
4. Costs of Activity **2:** Employment Data						
5. Costs of Activity 3: Review of Allocation Data						
6. Costs of Activity **4:** Handicapped and FW Data						
7. Costs of Activity 5: Energy Conservation Data						
8. Costs of Activity 6: Public Participation						
(05) Total Direct Costs						

Indirect Costs

(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line **(06)** x line (05)(a)] or [line **(06)** x {line (05)(a) + line (05)(b)}]	
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]	

Cost Reduction

(09) Less: Offsetting Savings, if applicable	
(10) **Less:** Other Reimbursements, if applicable	
(11) Total Claimed Amount [Line (08) - {line (09) + line (10)}]	

Program 055	REGIONAL HOUSING NEED DETERMINATION CLAIM SUMMARY Instructions	FORM RH-1

(01) Enter the name of the claimant.

(02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which costs were incurred or are to be incurred.

Form RH-1 must be filed for a reimbursement claim. Do not complete form RH-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form RH-I must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) Leave blank.

(04) Reimbursable Components. For each reimbursable component, enter the total from form RH-2, line (05), columns (d), (e), (f), (g), and (h) to form RH-1, block (04), columns (a), (b), (c), (d), and (e) in the appropriate row. Total each row.

(05) Total Direct Costs. Total columns (a) through (f).

(06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is **used,** include the Indirect Cost Rate Proposal (ICRP) with the claim.

(07) Total Indirect Costs. If the 10% flat rate is used for indirect costs, multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If an ICRP is submitted and both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06). If more than one department is reporting costs, each must have its own ICRP for the program.

(08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(f), and Total Indirect Costs, line (07).

(09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant **as** a direct result of this mandate. Submit a detailed schedule of savings with the claim.

(10) Less: Other Reimbursements, if applicable. Enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.

(11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder on this line **and** carry **the** amount forward to form **FAM-27,** line (07) for the Estimated Claim or line (13) for the Reimbursement Claim.

Program 055	MANDATED COSTS REGIONAL HOUSING NEED DETERMINATION COMPONENT/ACTIVITY COST DETAIL	FORM RH-2

(01) Claimant

(02) Fiscal Year Costs Were Incurred

(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

A. Councils of Governments

☐ Data Review ☐ Public Hearings ☐ Iterated Activities

☐ Draft Plan ☐ Revision Review

B. Cities and Counties

☐ Residential Development ☐ Handicapped and Farm Workers Data

☐ Allocation Data ☐ Public Participation

☐ Employment Data ☐ Energy Conservation Data

04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Supplies	(g) Travel	(h) Contract Services
(05) Total ☐ Subtotal ☐ Page:____of____							

Revised **09/03**

Program 055	REGIONAL HOUSING NEED DETERMINATION COMPONENT/ACTIVITY COST DETAIL Instructions	FORM RH-2

(01) Enter the name of the claimant.

(02) Enter the fiscal year for which costs were incurred.

(03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form RH-2 shall be prepared for each applicable component.

(04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in **block** (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent **by** each employee, productive hourly rates, fringe benefits, supplies used, contract services and travel expenses. The descriptions required in column (4)(a) must be **of** sufficient detail **to** explain **the** cost **of** activities **or** items being claimed. For audit purposes, all supporting documents must be retained by the claimant for a period of not less than three years after the date the claim was filed or last amended, whichever *is* later. If no funds were appropriated and no payment was made at the time the claim was filed, the time for the Controller to initiate an audit shall be from the date of initial payment *of* the claim. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub object Accounts	Columns								Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
Salaries	Employee Name Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked					
Benefits	Activities	Benefit Rate			Benefits = Benefit Rate x Salaries				
Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used			
Travel	Purpose of Trip Name and Title Travel Date	Per Diem Rate Mileage Rate Travel Cost	Days Miles Travel Mode				Total Travel Cost = Rate x Days or Miles		Invoice
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service					Cost = Hourly Rate x Hours Worked or Total Cost	

(05) Total line (04), columns (d), (e), (f), (g), and (h) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the component/activity costs, number each page. Enter totals from line (05), columns (d), (e), (f), (g), and (h) to form RH-1, block (04), columns (a), **(b), *(c),*** (d) and ***(e)*** in the appropriate row.

EXHIBIT B

LEAGUE OF CALIFORNIA CITIES

1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

July 21,2004

TO:

Assembly Member Alan Lowenthal, Chair, Assembly Housing Committee
Assembly Member Bob Dutton, Vice Chair, Assembly Housing Committee
Senator Denise Moreno Ducheny, Chair, Senate Housing Committee
Senator Dennis Hollingsworth, Vice Chair, Senate Housing Committee
Ms. Paula Higashi, Executive Director, State Mandates Commission
Mr. Richard Lyon, Legislative Representative, CBIA
Mr. Rusty Selix, Executive Director, Cal-COG
Ms. DeAnn Baker, Legislative Representative , CSAC
Ms. Yolanda Benson, Legislative Deputy, Governor's Office

FROM: Daniel Carrigg, Legislative Representative, League of California Cities

RE: **Potential Trailer Bill Language to Add Government Code § 65584.1**
OPPOSE

This memo presents the League of California Cities' **OPPOSITION** to a (attached) proposed amendment to Government Code § 65584.1, and the review of this language by city attorneys. We oppose the attached language based upon the following legal and policy reasons:

- The Legislature may not avoid its Constitutional obligation to reimburse local governments for the costs of state-mandated programs by allowing local governments to charge fees. The requirement to reimburse for mandates covered by the Constitution is unqualified. If the Legislature authorizes a local agency to impose a fee to pay for the costs of the mandate, but the local agency chooses not to impose that fee, the costs incurred to carry out the mandate must be reimbursed by the State.

- The Legislature may not **require** cities and counties to pay a fee imposed by a COG. Fees are charges either for services voluntarily received or to mitigate the impacts of actions of the fee payer. This fee does not fall into either category which means that the "fee" is a tax. The Legislature is prohibited by the Constitution from imposing a local tax for a state purpose. Requiring a city or county that is not a member of a COG to pay this "fee" is particularly egregious and an extreme intrusion into local control.

- The Legislature has no authority to make budgetary decisions for cities and counties. The requirement to pay a fee is a budgetary decision.

- **A** fee charged by a city or county to pay for costs incurred by a council of governments is a tax. The law allows cities and counties to charge fees "necessary or appropriate" for the work of the city or county's planning department. The fee that the amendment requires cities and counties to charge is not for the work of their planning agencies: it is for the work of the COG's planning department. Taxes require voter approval.

- The amendment violates the contract clause. **A** council of governments is a joint powers agency formed pursuant to the laws of the State of California. The joint powers agency acts pursuant to an agreement, which is a contract between the member agencies. The provisions of that contract are the sole authority upon which the COG acts. The amendment begins with the phrase "Notwithstanding any provision of a joint powers agency agreement to the contrary." The Legislature may not interfere with these agreements through this amendment.

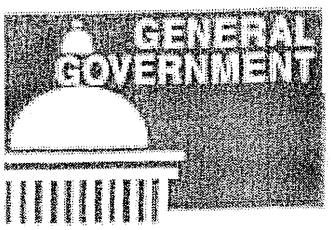
- The rationale for this language appears to be based on speculation that the State Mandates Commission may rule in the future that Councils of Governments are not eligible for reimbursement for state mandates. After speaking with representatives of the Commission it is clear that: (1) No such final decision has been reached; (2) The question has not yet been placed before them; and (3) If such a matter is placed before them, it would likely not be decided until January 1, 2006. Final decisions of the Commission may also be challenged through litigation. Thus, this effort to fund an existing state mandated program through an alternative mechanism is premature.

- Thank you for your attention and consideration. In short, we believe that if the State chooses to require councils of government to implement the obligations of Government Code § 65584, unless a legally-valid decision dictates otherwise, the State is required to continue to reimburse them for that mandate.

Proposed Draft Trailer Bill Language:

65584.1 Notwithstanding any provision of a joint powers agency agreement to the contrary, a council of governments may charge a fee to local governments to cover the projected actual, direct costs of ***the*** *council in distributing the regional housing need pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations pursuant to Section 65584. If a council of governments charges a fee to local governments for this purpose, all local governments within the area covered by the council of governments, regardless of whether or not a local government is a member of the council of governments, shall pay the fee. A city or county, or city and county may charge a fee to support the work of the planning agency pursuant to this article, and to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing the regional housing need. The legislative body of the city, county or city and county shall impose any fee pursuant to Section 66016.*

EXHIBIT C



Legislative Analyst's Office

Analysis of the 2003-04 Budget Bill

Housing and Community Development (2240)

The mission of the Department of Housing and Community Development (HCD) is to help promote and expand housing opportunities for all Californians. As part of this mission, the department is responsible for implementing and enforcing building standards. It also administers a variety of housing finance, economic development, and rehabilitation programs. In addition, the department provides policy advice and statewide guidance on housing issues.

The budget proposes expenditures of $651 million for 2003-04. Spending related to the passage of the Proposition 46 housing bond in November 2002 accounts for nearly $500 million of this amount. (Please see our analysis of the implementation of the housing bond in the "Crosscutting Issues" section of this chapter.) The proposed General Fund expenditures of $13 million—largely for emergency shelter assistance and the operation of migrant farmworker housing—is a 12 percent decrease from the current year. Federal funds account for $124 million of the proposed budget-year expenditures, primarily for the Community Development Block Grant and Home Investment Partnership Act programs. Special funds provide the remainder of the department's expenditures. The department has a proposed staffing level of 507 personnel-years.

Mandate for Regional Planning Needs Legislative Changes

As part of its general plan, every city and county is required to prepare a "housing element" which assesses the conditions of its housing stock and outlines a five-year plan for housing development, Unlike other components of a local government's general plan, the housing element must be approved by the state—an activity performed by HCD. Despite the legal requirement of having a housing element in compliance with state law, only 56 percent of local governments currently meet this obligation.

Proposal to Defer Costs for Mandate

Mandate for Regional Planning. Chapter 1143, Statutes of 1980 (AB 2853, Roos), significantly expanded the requirements of local housing elements by requiring additional analysis of local housing needs, particularly in relation to housing by income group. Each community is assigned numeric housing development goals by income (that community's "fair share" of housing) through a process administered by regional councils of government (COGs).

Chapter 1143 was passed after the constitutional amendment which requires mandate reimbursements for state-required activities. The state, therefore, is required to reimburse local governments for the cost of the implementation of this regional planning mandate. (The state does not pay for other portions of the housing element process in place prior to Chapter 1143.) Specifically, the state is required to pay COGs, cities, and counties for the following expenses:

- ***Regional COGs.*** Reimbursable costs include expenses related to the administrative costs of distributing the region's total housing goals to individual communities, including public meetings

and any necessary revisions.

- ***Cities and Counties.*** Reimbursable costs include expenses related to reviewing the COG's allocation and examining a variety of specialized housing factors in their housing element.

Governor Proposes Deferring Reimbursements Again. As with other mandates, the 2002-03 *Budget Act* appropriated only $1,000 for the regional planning mandate—in effect deferring (with interest) the costs of reimbursements to local governments. For 2003-04, the Governor proposes to again defer these payments. During this deferment, local governments are still required to follow the statutory requirements, and the state continues to accumulate a financial liability for the mandated costs.

Costs Much Greater Than Budgeted. Because the state provides revised housing data to regions on a five-year rotating basis, not all local governments incur mandate costs in any given year. Prior to the 2002-03 budget, recent annual budgets provided less than $1 million for the costs of reimbursing local governments for this mandate. Yet, the annual costs associated with the mandate have been significantly greater than those budgeted amounts. For instance, from 1998-99 through 2001-02, a total of $3.5 million was appropriated through the budget bills for mandate reimbursements. To date, *$9.9* million in claims have already been submitted for reimbursement for those years. In other words, the costs for the allocation process have been about *three times* the amount that the Legislature expected. If the Legislature were to again defer the payment of this mandate, we estimate the state would have a future liability of more than $5 million combined for the two years of deferment.

City and County Mandate Does Not Lead To Housing Element Compliance

Cities and counties have broad discretion to interpret what level of effort is required by the regional planning mandate. As a result, claim costs vary tremendously by jurisdiction. Moreover, the mandate does not ensure compliance with state housing element requirements. Consequently, we recommend eliminating the mandate for cities and counties.

Majority of Mandate Costs for Cities and Counties. It is commonly assumed that the regional planning mandate costs are primarily for reimbursing COGs for their work in allocating housing numbers. Our review of submitted mandate claims, however, found that about 75 percent of the costs are associated with claims from cities and counties.

Tremendous Variation in Claim Costs. Since eligible costs for reimbursement relate to the collection, tabulation, and analysis of data, local governments have broad discretion as to what level of effort is appropriate under Chapter 1143. In our review, we found that the amounts of the claims vary tremendously—even for claims from similarly sized jurisdictions. For instance, the City of Corona in Riverside County submitted claims totaling about $13,000 over a two-year period, but the City of Moreno Valley (a similarly sized city also in Riverside County) submitted claims of about $265,000—20 *times* the amount of Corona's claims.

High Claims Do Not Lead to City and County Compliance. Spending time and money on mandated activities does not guarantee an increased number of state-approved housing elements. Jurisdictions can still seek reimbursements even if they fail to bring their housing elements into compliance with state law. For example, Corona's housing element is currently in compliance with state law, but Moreno Valley's element is out of compliance—despite Moreno Valley spending much more on mandated activities.

Recommend Eliminating Mandate on Cities and Counties. Since it provides broad discretion for levels of effort and does not guarantee compliance with state law, we conclude that the mandate on cities and counties is not worth the roughly $2 million annual cost—whether paid now or deferred to a later date. We, therefore, recommend that the Legislature enact legislation deleting the regional planning mandate for cities and counties. While some specific requirements of current law would be eliminated, cities and counties would still be required to adopt a state-approved housing element which addresses community housing needs.

Wait for Reform—Suspend Mandate for Regional Governments

The regional housing planning pracess is not very effective at ensuring the construction of affordable housing or obtaining compliance with state law. As a result, we recommend that the regional planning mandate for councils of government be suspended, pending the enactment of reforms to the process.

Concept for Oversight Has Merit. We believe that housing elements and the regional needs allocation process have merit in concept. They provide the state the opportunity to offer guidance on housing policy, while allowing local governments the flexibility to address their housing needs based on local conditions. The COGs play an important role in providing a regional perspective to this planning process.

Process Needs Improvement. At the same time, the current process is not very effective. Almost half of communities are not in compliance with state law, and some communities do not make an effort to obtain compliance. There are few incentives or sanctions to encourage local government compliance and accountability. Moreover, in its current form, the process is only a planning exercise. Little follow-up effort is made to ensure that the plans are followed and affordable housing is actually built. Last year, the Legislature attempted to address some of these problems in its discussions regarding SB 910 (Dunn), but no reform proposal was enacted.

Recommend Suspending Mandate on Regional Governments. At the conclusion of the 2002-03 housing needs allocation process, all regions will have completed an update in the past five years. Given the significant shortcomings of the process, we do not believe it is worth beginning another cycle of revisions under the current system. Instead, we recommend that the Legislature suspend the regional planning mandate for COGs and pursue legislative reforms of the process. Once the process undergoes significant improvements, the fair share allocation process could be reinstated. During the suspension, the state would avoid annual mandate liabilities of about $700,000.

To suspend this mandate, the Legislature would need to amend the budget bill to show a $0 appropriation (Item 2240-295-0001) and replace mandate budget provisions (1) and (2) with the following:

Pursuant to Section 17581 of the Government Code, mandates identified in the appropriation schedule of this item with an appropriation of $0 and included in the language of this provision are specifically identified by the Legislature for suspension during the 2003-04 fiscal year:(1) Regional Housing Needs Assessment (Ch 1143, Stats. 1980).

Return to General Government Table of Contents, 2003-04 Budget Analysis

PROOF OF SERVICE

I, Cynthia Pacheco, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 865 South Figueroa Street, 29th Floor, Los Angeles, California 90017. On December 1, 2004, I served a copy of the within document(s):

Declaration of Patricia J. Chen in Support of Opening Brief of Southern California Association of Governments

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

Eric D. Feller, Esq.
Commission State Mandates
980 9th Street, #300
Sacramento, CA 95814
Eric.feller@csm.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 1, 2004, at Los Angeles, California.

/Cynthia Pacheco

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR BOARD OF CONTROL DECISION ON: Statues 1980, Chapter 1143 Claim No. 3929 Directed by Statutes 2004, Chapter 227, Sections 109-110 (Sen. Bill No. 1102) Effective August 16, 2004	Case No. 04-RL-3929-05 ***Regional Housing Needs Determination-Councils of Governments*** **AUTHORITIES CITED IN OPENING BRIEF OF SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS** HEARING DATE: March 31, *2005*

Attached hereto are the following state laws:

1. Cal. Const., Art. XIII B § 6
2. Cal. Govt. Code § 17556
3. Cal. Govt. Code § 65584
4. Cal. Govt. Code § 65584.1
5. Cal. Govt. Code § 65584.2

Cal Const, Art XIII B § 6

CONSTITUTION OF THE STATE OF CALIFORNIA
ARTICLE XIII B. GOVERNMENT SPENDING LIMITATION

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Const, Art XIII B § 6 (2004)

§ 6. Reimbursement for new programs and services

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected;

(b) Legislation defining a new crime or changing an existing definition of a crime; or

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

HISTORY:
Adopted November 6, 1979.

NOTES:
NOTE-
Stats 2004 ch 216 provides:
SEC. 34. Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-23, relating to the Standardized Testing and Reporting (STAR) program mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:
(a) Chapter 975 of the Statutes of 1995.
(b) Chapter 828 of the Statutes of 1997.
(c) Chapter 576 of the Statutes of 2000.
(d) Chapter 722 of the Statutes of 2001.

NOTE-
Stats 2004 ch 316 provides:
SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior

determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

CROSS REFERENCES:

Appropriation and payment of amount due to cities, counties and special districts for which reimbursement is required under Cal Const Art. XIII B § 6 as of June 30, 1995: Gov C § 17617.

Subvention of funds to reimburse local governments: Gov C §§ 17500 et seq.

COLLATERAL REFERENCES:

LAW REVIEW ARTICLES:

Educational financing mandates in California: reallocating the cost of educating immigrants between state and local governmental entities. 35 Santa Clara LR 367,

ATTORNEY GENERAL'S OPINIONS:

Judicial arbitration is mandated by the Legislature for municipal courts within the meaning of Cal Const., art. XIIIB, § 6 as to arbitration based upon stipulation or plaintiff election. It is also mandated within the meaning of Article XIIIB, § 6 as to "court ordered" arbitration resulting from a local court rule adopted after July 1, 1980, the effective date of Article XIIIB. Cal. Const., Art. XIIIB, § 6 contemplates that the state should provide a subvention of funds to reimburse counties for the costs of the judicial arbitration in municipal courts. Reimbursement, however, is still subject to appropriation of funds by the Legislature. 64 Ops. Cal. Atty. Gen. 261.

Commission on State Mandates does have authority to reconsider prior final decision relating to existence or nonexistence of state mandated costs, where prior decision was contrary to law. 72 Ops. Cal. Atty. Gen. 173.

NOTES OF DECISIONS

1. In General

An enactment may have an "operative" date different from its "effective" date, and does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment. It should not be given a retroactive application unless it is clear that the Legislature so intended. Thus, the construction of Cal. Const., art, XIII B, § 6, as requiring that local governments be reimbursed for costs incurred as a result of mandates enacted between January 1, 1975 and July 1, 1980, but that reimbursement did have to begin until the latter date, which was the effective date of the statute, did not constitute an impermissible retroactive operation. The provision would operate prospectively after its effective date, albeit with respect to mandates both after that date and those in effect between January 1, 1975, and that date. City of Sacramento v State of California (1984, 3rd Dist) 156 Cal App 3d 182, 203 Cal Rptr 258 (disapproved on other grounds by County of Los Angeles v State of California, 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202) and (disapproved on other grounds by City of Sacramento v State of California, 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522).

Generally, principles of construction applicable to statutes are also applicable to constitutional provisions. Thus, in construing Cal. Const., art. XIII B, § 6, which was effective on July 1, 1980, and provided that reimbursement of local governments was required for any "new program or higher level of service" mandated by the state, but also provided that reimbursement was permissive for legislative mandates enacted prior to January 1, 1975, the proper construction was that, for legislative mandates enacted between January 1, 1975, and July 1, 1980, the "window period" of the statute, reimbursement was required but did not have to begin until the statute's effective date. This construction accorded with the rule of expressio unius est exclusio alterius--where the electorate had specified an exception to the general rule of mandatory reimbursement (prior to January 1, 1975), other exceptions were not to be implied or presumed. A construction that reimbursement was permissive for the window period would have rendered the exception for pre-1975 mandates meaningless. City of Sacramento v State of California (1984, 3rd Dist) 156 Cal App 3d 182, 203 Cal Rptr 258 (disapproved on other grounds by County of Los Angeles v State of California, 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202) and (disapproved on other grounds by City of Sacramento v State of California, 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522).

Cal. Const., art. XIII B, § 6, requiring the Legislature to reimburse local governments for expenses incurred as a result of state law, does not authorize courts to act if the Legislature fails to appropriate funds for this purpose. Although such a legislative failure might frustrate the constitutional intent, the question of whether to appropriate funds is still exclusively a matter of legislative discretion, unless the electorate directly appropriates such funds by its own vote. City of Sacramento v California-State Legislature (1986, 3rd Dist) 187 Cal App 3d 393, 231 Cal Rptr 686.

The subvention provisions of Cal. Const., art. XIII B, § 6, operate so as to require the state to reimburse counties for state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January

1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the state did not have to begin reimbursement until the effective date of the amendment. Carmel Valley Fire Protection Dist. v State (1987, 2nd Dist) 190 Cal App 3d 521, 234 Cal Rptr 795.

The concepts of reimbursable state-mandated costs in Cal. Const., art. XIII B, requiring that the state reimburse local governments for the costs of state-mandated new programs or higher levels of service, and former Rev. &Tax. Code, §§ 2207, 2231, are identical. City of Sacramento v State of California (1990) 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522.

State reimbursement statute, Gov C § 17556(d) was facially constitutional because it did not create a new exception to reimbursement as required by Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

Gov C § 17500-17630 was enacted to implement Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

As a matter of law, no provision mandates the reimbursement of costs incurred under California Occupational Safety and Health Administration (Cal/OSHA), and thus a school district, seeking reimbursement for its expenditures complying with Cal/OSHA, had no right to reimbursement. Cal/OSHA was enacted in 1973. By its terms, Cal. Const., art. XIII B, § 6 (reimbursement to local governments for new programs and services), enacted in 1975, allows but does not require reimbursements for funds expended complying with prior legislation. Also, the Legislature enacted reimbursement provisions in 1980 (Gov. Code, § 17500 et seq.), and later repealed Rev. & Tax. Code, §§ 2207.5, 2231, also dealing with reimbursement. These legislative acts effectively preclude reimbursement for compliance with legislation enacted before 1975. Los Angeles Unified School Dist. v **State** of California (1991, 2nd Dist) *229* Cal App 3d 552, 280 Cal Rptr 237.

Since Cal. Const., art. XIII B, requiring subvention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. Hayes v Commission on State Mandates (1992, 3rd Dist) 11 Cal App 4th 1564, 15 Cal Rptr 2d 547.

Since the statutory scheme (Gov. Code, § 17500 et seq.) for resolution of state mandate claims arising under Cal. Const., art. XIII B, § 6, contemplates that the Legislature will appropriate funds in a claims bill to reimburse an affected entity for state-mandated expenditures made prior to its enactment, the date the Legislature deletes such funds is also the point at which a nonstatutory cause of action logically accrues for the reimbursement of expenditures that are not recoverable under the statutory procedure. Berkeley Unified School Dist. v State of California (1995, 3rd Dist) 33 Cal App 4th 350, 39 Cal Rptr 2d 326.

In enacting Gov. Code, § 17500 et seq., the Legislature established the Commission on State Mandates as a quasi-judicial body to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs arising out of Cal. Const., art. XIII B, § 6. The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of Cal. Const., art. XIII B, § 6, lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establish procedures that exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal. Const., art. XIII B, § 6. Thus, the statutory scheme contemplates that the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Redevelopment Agency v California Comm'n on State Mandates (1996, 4th Dist) 43 Cal App 4th 1188.

Rules of constitutional interpretation require that constitutional limitations and restrictions

on legislative power are to be construed strictly and are not to be extended to include matters not covered by the language used. Policymaking authority is vested in the Legislature, and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation. Under these principles,' there is no basis for applying Cal. Const., art. XIII B, § 6, which imposes limits on the state's authority to mandate new programs or increased services on local governmental entities, as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities. City of San Jose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr 2d 521.

Simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting "service to the public" under Cal Const Art XIII B, § 6 and Gov C § 17514. San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS *7079.*

2. Purpose

When the voters adopted Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. County of Los Angeles v State of California (1987) 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202,

The goals of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of art. XIII B, § 6, did not effect a pro tanto repeal of Cal. Const., art. XIV, § 4, which gives the Legislature plenary power over workers' compensation. County of Los Angeles v State of California (1987) 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202.

The intent of Cal. Const., art. XIII B, § 6, was to preclude the state from shifting to local agencies the financial responsibility for providing public services, in view of restrictions imposed on the taxing and spending power of local entities by Cal. Const., arts. XIII A, XIII B. Lucia Mar Unified School Dist. v Honig (1988) 44 Cal 3d 830, 244 Cal Rptr 677, 250 P2d 318.

In Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), "mandates" means "orders" or "commands," concepts broad enough to include executive orders as well as statutes. The concern that prompted the inclusion of § 6 in art. XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services that the state believed should be extended to the public. It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared. Long Beach Unified Sch. Dist. v State of California (1990, 2nd Dist) 225 Cal App 3d 155, 275 Cal Rptr 449.

Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that Cal. Const., arts. XIII A

and XIII B, impose. With certain exceptions, Cal. Const,, art. XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level. Redevelopment Agency v Commission on State Mandates (1997, 4th Dist) 55 Cal App 4th 976, 64 Cal Rptr 2d 270.

The intent underlying Const Art XIII B § 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state-mandate. Local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state. City of Richmond v Commission on State Mandates (1998, 3rd Dist) 64 Cal App 4th 1190, 75 Cal Rptr 2d 754.

Intent underlying Cal Const Art XIII B § 6, was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

3. Definitions

When a word or phrase has been given a particular meaning in one part of a law, it is to be given the same meaning in other parts of the law. Thus, in the government spending limitation provisions of Cal. Const., art. XIII B, the definition of "mandate" in § 9, subd. (b), as being an enactment that directs compliance without discretion, governed with respect to § 6, which required state reimbursement of local governments for costs of state mandated programs. City of Sacramento v State of California (1984, 3rd Dist) 156 Cal App 3d 182, 203 Cal Rptr 258 (disapproved on other grounds by County of Los Angeles v State of California, 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202) and (disapproved on other grounds by City of Sacramento v State of California, 50 Cal 3d 51, 266 Cal Rptr **139,** 785 P2d 522).

The word "program," as used in Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. County of Los Angeles v State of California (1987) 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202.

A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6, is one which carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Carmel Valley Fire Protection Dist. v State (1987, 2nd Dist) 190 Cal App 3d 521, 234 Cal Rptr 795.

In Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), "mandates" means "orders" or "commands," concepts broad enough to include executive orders as well as statutes. The concern that prompted the inclusion of § 6 in art. XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services that the state believed should be extended to the public. It is clear that the primary concern of the voters

was the increased financial burdens being shifted to local government, not the form in which those burdens appeared. Long Beach Unified Sch. Dist. v State of California (1990, 2nd Dist) 225 Cal App 3d 155, 275 Cal Rptr 449.

A "new program" within the meaning of Cal. Const., art. XIII B, § 6 (reimbursement of local governments for new programs mandated by state), is a program that carries out the governmental function of providing services to the public, or a law that, to implement state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. But no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus do not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This is true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no true choice in the manner of implementation of the federal mandate. County of Los Angeles v Commission on State Mandates (1995, 2nd Dist) 32 Cal App 4th 805, 38 Cal Rptr 2d 304,

The state was not obligated to reimburse local governments by virtue of its reduction of property taxes previously allocated to local governments and its simultaneous placement of an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF) (former Rev & Tax C § 97.03) for distribution to school districts, since the reallocation of revenue did not result in reimbursable "costs" and the ERAF legislation did not amount to the imposition of a "new program or higher level of service" within the meaning of Cal Const art XIII B § 6. Section 6 subvention was intended for increases in actual costs, not lost revenue, and the state had not imposed responsibility for any program that local governments had not always had a substantial share in supporting. Nor did Proposition 98 (Cal Const art XVI § 8), providing a minimum level of funding for schools, confer a right of subvention on counties. Proposition 98 merely provides the formulas for determining the minimum to be appropriated every budget year. County of Sonoma v Commission on State Mandates (2000, 1st Dist) 84 Cal App 4th 1264, 101 Cal Rptr 2d 784.

4. Jurisdictional Issues

The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim, The trial court's failure to defer to the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

5. New Program Mandated

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under Cal. Const., art. XIII **B,** § 6. Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting. Carmel Valley Fire Protection Dist. v State (1987, 2nd Dist) 190 Cal App 3d 521, 234 Cal Rptr 795.

Ed. Code, § 59300 (requiring school districts to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped), imposes on school districts a "new program or higher level of service" within the meaning of Cal. Const., art. XIII B, § 6 (providing reimbursement to local agencies for state-mandated new programs or higher levels of service). Thus, in a test case brought by school districts, the Commission on State Mandates erred in finding to the contrary; however, remand to the commission was necessary to determine whether § 59300 was a state mandate. Lucia Mar Unified School Dist. v Honig (1988) 44 Cal 3d 830, 244 Cal Rptr 677, 750 P2d 318.

Stats. 1978, ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restricting local taxation, and thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. In enacting Stats. 1978, ch. 2, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses; the alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal standards. (Disapproving, insofar as it is inconsistent with this analysis, the decision in City of Sacramento v. State of California (1984) 156 Cal.App.3d 182[203 Cal.Rptr. 258].) City of Sacramento v State of California (1990) 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522.

A school district was entitled to reimbursement pursuant to Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since an executive order (in the form of regulations issued by the state Department of Education) required a higher level of service and constituted a state mandate. The requirements of the order went beyond constitutional and case law requirements in that they required specific actions to alleviate segregation. Although under Cal. Const., art. XIII B, § 6, subd. (c), the state has discretion whether to reimburse pre-1975 mandates that are either statutes or executive orders implementing statutes, it cannot be inferred from this exception that reimbursability is otherwise dependent on the form of the mandate. Further, the district's claim was not defeated by Gov. Code, § 17561, 17514, limiting reimbursement to certain costs incurred after July 1, 1980, the effective date of Cal. Const., art. XIII B, since the limitations contained in those sections are confined to the exception contained in Cal. Const., art. XIII B, § 6, subd. (c). Long Beach Unified Sch. Dist. v State of California (1990, 2nd Dist) 225 Cal App 3d 155, 275 Cal Rptr 449.

The 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state-mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand of a proceeding by school districts to the Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether

those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program. Hayes v Commission on State Mandates (1992, 3rd Dist) 11 Cal App 4th 1564, 15 Cal Rptr 2d 547.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const,, art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules (Welf. & Inst. Code, § 14000.2), and Medi-Cal was administered by state departments and agencies. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000 (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although Welf. & Inst. Code, § 17000, does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under Welf. & Inst. Code, § 17000. The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would have taken corrective action if it disagreed. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. Welf. & Inst. Code, § 17000, mandates that medical care be provided to indigents, and Welf. & Inst. Code, § 10000, requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing Welf. & Inst. Code, § 17000, have held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under Welf. & Inst. Code, § 17000, requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

Ed C § 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a "higher level of service" under Cal Const Art XIII B, § 6, and imposes a reimbursable state mandate for all resulting hearing costs, even those costs attributable to procedures required by federal law. San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

6. New Program Not Mandated

The provisions of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of art. XIII B, § 6. Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving City of Sacramento v. State of California (1984) 156 Cal.App.3d 182[203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.) County of Los Angeles v State of California (1987) 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202.

In an administrative mandamus proceeding brought by a city to compel the State Board of Control to grant the city's claim to reimbursement for increased employer contribution rates to the Public Employees' Retirement System (PERS), attributable to transfers of reserve funds to a special temporary benefits fund pursuant to an act of the Legislature, the trial court properly denied the writ on the ground that such an increase was not reimbursable under Cal. Const., art. XIII B, § 6, as a state-mandated local expense. Bearing the costs of employment is not a "service" that the city is required by state law to provide in its governmental function, and where such costs as pension contributions, workers' compensation insurance, and other expenses of public employment increase incidentally to legislatively imposed changes in the operation of a state agency like PERS, reimbursement of local government employers is not compelled by the legislative purposes of § 6 (control of excessive taxation and spending, prevention of shift of financial burdens of programs from state to local governments). City of Anaheim v State of California (1987, 2nd Dist) 189 Cal App 3d 1478, 235 Cal Rptr 101.

In a class action by a city on behalf of all local governments in the state against the state, in which it was alleged that Stats. 1978, ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, mandated a new program or higher level of service on local agencies for which reimbursement by the state was required under Cal. Const., art. XIII B, the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing such coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (former Rev. & Tax. Code, §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 1-7561, subd. (a)). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. The phrase, "To force programs on local governments," in the voters' pamphlet relating to Cal. Const., art. XIII B, § 6, confirmed that the intent underlying that section was to require reimbursement to local agencies for the cost involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that applied generally to all state residents and entities. City of Sacramento v State of California (1990) 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522.

The constitutional subvention provision (Cal. Const., art. XIII B, § 6) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the

plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate. Hayes v Commission on State Mandates (1992, 3rd Dist) 11 Cal App 4th 1564, 15 Cal Rptr 2d 547.

The trial court properly denied a writ of mandate sought by a county to compel the Commission on State Mandates to vacate its determination that Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute a state mandate, for which the state was obligated to reimburse the county pursuant to Cal. Const., art. XIII B, § 6. The requirements of Pen. Code, § 987.9, are not state mandated. Pursuant to the federal Constitution's guaranty of the right to counsel and its due process clause (US. Const., 6th and 14th Amends.), the right to counsel of an indigent defendant includes the right to the use of experts to assist counsel in preparing a defense. Thus, even in the absence of Pen.. Code, § 987.9, counties would be responsible for providing ancillary services under those federal constitutional guaranties. And, even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate under Cal. Const., art. XIII B, § 6. If a local entity has alternatives under the statute other than the mandated contribution, that contribution does not constitute a state mandate. In fact, the requirements under Pen. Code, § 987.9, are not mandated by the state, but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under the statute. County of Los Angeles v Commission on State Mandates (1995, 2nd Dist) 32 Cal App 4th 805, 38 Cal Rptr 2d 304.

Gov. Code, § 29550, which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, does not establish a new program or higher level of service under Cal. Const., art. XIII B, § 6, which imposes limits on the state's authority to mandate new programs or increased services on local governmental entities, since the shift in funding is not from the State to the local entity but from county to city. At the time Gov. Code, § 29550, was enacted, and long before, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county (Gov. Code, § 29602). In this respect, counties are not considered agents of the state. Moreover, Cal. Const., art. XIII B, treats cities and counties alike as "local government." Thus, for purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike as part of "local government"; both are considered local agencies or political subdivisions of the state. Nothing in Cal. Const., art. XIII B prohibits the shifting of costs between local governmental entities. City of San Jose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr 2d 521.

Gov. Code, § *29550,* which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, does not shift costs so as to constitute a state "mandate" within the meaning of Cal. Const., art. XIII B, § 6, which imposes limits on the State's authority to mandate new programs or increased services on local governmental entities. The pertinent words of the statute state that "a county may impose a fee on a city." Thus, it does not require that counties impose fees on other local entities, but only authorizes them to do so. Although as a practical result of the authorization under Gov. Code, § 29550, a city is required to bear costs it did not formerly bear, a mandate cannot be read into language that is plainly discretionary. Cal. Const., art. XIII B, § 6, was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State. City of San Jose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr

2d 521.

The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its low- and moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6 (subvention). Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3. Redevelopment Agency v Commission on State Mandates (1997, 4th Dist) 55 Cal App 4th 976, 64 Cal Rptr 2d 270.

An amendment to Lab C § 4707, which eliminated local safety members of the Public Employees' Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS, so that the survivors of a local safety member of PERS who is killed in the line of duty receives both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter, did not mandate a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under Const Art XIII B § 6. The amendment addressed death benefits, not the equipment used by local safety members. Increasing the cost of providing services could not be equated with requiring an increased level of service under Const Art XIII B § 6. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public. Further, the amendment simply put local government employers on the same footing as all other nonexempt employers, requiring that they provide the workers' compensation death benefit. That the amendment affected only local government did not compel the conclusion that it imposed a unique requirement on local government. City of Richmond v Commission on State Mandates (1998, 3rd Dist) 64 Cal App 4th 1190, 75 Cal Rptr 2d 754.

Legislation requiring local redevelopment agencies to contribute to a local Educational Revenue Augmentation Fund (ERAF) did not constitute a reimbursable state mandate under Cal Const art XIIIB § 6. The ERAF legislation was, in part, an exercise of the Legislature's authority to apportion property tax revenues; the shift of a portion of redevelopment agency funds to local schools was merely the most recent adjustment in the historical fluidity of the fiscal relationship between local governments and schools. In addition, subvention is required only when the costs in question can be recovered solely from tax revenues and here the Legislature provided that a redevelopment agency's obligations for the local ERAF fund could be paid from any legally available source. City of El Monte v Commission on State Mandates (2000, 3rd Dist) 83 Cal App 4th 266, 99 Cal Rptr 2d 333.

The state was not obligated to reimburse local governments by virtue of its reduction of property taxes previously allocated to local governments and its simultaneous placement of an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF) (former Rev & Tax C § *97.03)* for distribution to school districts, since the reallocation of revenue did not result in reimbursable "costs" and the ERAF legislation did not amount to the imposition of a "new program or higher level of service" within the meaning of Cal Const art XIII B § 6. Section 6 subvention was intended for increases in actual costs, not lost revenue, and the state had not imposed responsibility for any program that local governments had not always had a substantial share in supporting. Nor did Proposition 98 (Cal Const art XVI § 8), providing a minimum level *of* funding for schools, confer a right *of* subvention on counties.

Proposition 98 merely provides the formulas for determining the minimum to be appropriated every budget year. County of Sonoma v Commission on State Mandates (2000, 1st Dist) 84 Cal App 4th 1264, 101 Cal Rptr 2d 784.

Domestic violence training requirement for local police officers, pursuant to Cal. Penal Code § 13519(e), was not an unfunded mandate entitling a county to reimbursement from the state; police officers already had continuing education requirements, so any new costs were minimal. County of Los Angeles v Commission on State Mandates (2003, Cal App 2nd Dist) 2003 Cal App LEXIS 1137.

No hearing costs incurred in carrying out those expulsions that are discretionary under Ed C § 48915, including costs related to hearing procedures claimed to exceed the requirements of federal law, are reimbursable; to the extent § 48915 makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

Even if the hearing procedures set forth in Ed C § 48918 constitute a new program or higher level of service, this statute does not trigger any right to reimbursement because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis; all hearing procedures set forth in § 48918 properly should be considered to have been adopted to implement a federal due process mandate, and hence all such hearing costs are nonreimbursable under Cal Const Art XIII B § 6, and Gov C § 17557(c). San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

7. Other Issues

Under Rev. & Tax. Code, § 2231, subd. (a), requiring the state to reimburse local agencies for all costs mandated by the state, as defined in Rev. &Tax. Code, § 2207, subd. (a), defining such costs as any increased costs a local agency is required to incur as a result of any law enacted after January 1, 1973, the Legislature had a statutory duty to reimburse two counties for all state-mandated costs incurred after the 1974-75 fiscal year pursuant to Stats. 1974, ch. 1392 (Gov. Code, § 23300 et seq.) in connection with the defeat of four proposed new counties. Although Cal. Const., art. XIII B, § 6, subd. (c), approved in 1980, provided the Legislature may, but need not, reimburse local governments for costs of legislative mandates enacted prior to January 1, 1975, the Legislature in 1980 amended Rev. &Tax. Code, § 2207, thereby reaffirming its statutory obligation to reimburse local agencies for the costs defined in § 2207, subd. (a), which constituted the exercise of legislative discretion authorized by Cal. Const., art. XIII B, § 6, subd. (c). The mandatory provisions of Rev. & Tax. Code, § 2231, do not restrict legislative power, and the Legislature is free to amend or repeal it as it applies to pre-1975 legislative mandates. County of Los Angeles v State of California (1984, 2nd Dist) 153 Cal App 3d 568, 200 Cal Rptr 394.

The Legislature's initial appropriation to reimburse counties for the costs of Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), was not a final and unchallengeable determination that the statute constitutes a state mandate, nor did the Commission on State Mandates err in finding that the statute is not a state mandate, despite the Legislature's finding to the contrary in a later appropriations bill. The commission was not bound by the Legislature's determination, and it had discretion to determine whether a state mandate existed. The comprehensive administrative procedures for resolution of claims arising out of Cal. Const., art. XIII B, § 6 (Gov. Code, § 17500 et seq.), are the exclusive procedures by which to implement and enforce the constitutional provision. Thus, the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Any legislative findings are irrelevant to the issue of whether a state mandate exists, and the commission properly determined that no such mandate existed. In any event, the Legislature itself ceased to regard the provisions of Pen. Code, § *987.9*, as a state mandate in 1983. County of Los Angeles v Commission on State Mandates (1995, 2nd Dist) 32 Cal App 4th 805, 38 Cal Rptr 2d 304.

School districts, which sought reimbursement pursuant to Cal. Const., art. XIII B, § 6, for the costs of a state mandated desegregation program, waived their nonstatutory remedy for such costs incurred after the Legislature deleted funds in a claims bill to pay for the costs, since their statutory cause of action under Gov. Code, § 17612, accrued on that date and they could have avoided the imposition of state mandated costs at any time after that cause of action accrued by timely use of the statutory remedy. Gov. Code, § 17612, provides, as to future state mandated expenditures, an efficacious procedure for the implementation of local agency rights under Cal. Const., art. XIII B, § 6. Thus, as to such expenditures, the exercise of the constitutional right to avoid involuntary expenditures is not unduly restricted. There is no statutory remedy of reimbursement of state mandated expenditures that could have been prevented after funding has been deleted from the local government claims bill. The courts accordingly must limit the remedy for future expenditures to the procedures established by the Legislature in Gov. Code, § 17612. It follows that any claim to reimbursement of subsequent costs is waived by the failure to seek the relief provided by that statute. Berkeley Unified School Dist. v State of California (1995, 3rd Dist) 33 Cal App 4th 350, 39 Cal Rptr 2d 326.

The judicially created remedy to enforce the right of local entities arising under Cal. Const., art. XIII B, § 6, to reimbursement for the costs of state-mandated programs is subject to the four-year limitations period provided in Code Civ. Proc., § 343 (action for relief for which no period of limitations previously provided). Berkeley Unified School Dist. v State of California (1995, 3rd Dist) 33 Cal App 4th 350, 39 Cal Rptr 2d 326.

A cause of action by school districts for reimbursement pursuant to Cal. Const., art. XIII B, § 6, for the costs of a state-mandated desegregation program accrued, pursuant to Gov. Code, § 17612, on the date the Legislature deleted funds in a claims bill to pay for the costs, and accrual was not postponed until the statute of limitations had run on the state's right to judicial review of an administrative determination in a test claim that there was a state mandate or until final judgment in any litigation brought by the test claimant or the state. Although the administrative decision in the test claim was not yet free of direct attack, under the doctrine of exhaustion of administrative remedies, judicial interference is withheld only until the administrative process has run its course, and that had occurred when, in the test claim case, the administrative agency had approved the claim that the desegregation regulations imposed a state mandate and issued guidelines for reimbursement for the claimed expenditures from the Legislature. Gov. Code, § 17612, implies that judicial interference must be withheld until the narrowly prescribed legislative process has also run its course. It does not imply that the judicial forum is unavailable thereafter. Berkeley Unified School Dist. v State of California (1995, 3rd Dist) 33 Cal App 4th 350, 39 Cal Rptr 2d 326.

In administrative mandamus proceedings by a city's redevelopment agency against the Commission on State Mandates to challenge the commission's ruling that the agency was not entitled to reimbursement for housing costs the agency incurred (Cal. Const., art. XIII B, § 6; Gov. Code, § 17550 et seq.; Health & Saf. Code, §§ 33334.2, 33334.3), the trial court erred in denying the Department of Finance's motion to intervene. The department and the commission are not merely two agents of the state representing the same interests. Separate statutory schemes create and govern the department and the cornmission, and since the department is authorized to sue the commission (Gov. Code, §§ 13070, 17559), it is more like an adversary party than it is an equivalent to the commission itself. Moreover, the commission is a quasi-judicial body that hears both sides of the dispute. In light of the department's right to notice and participation in the administrative hearings before the commission, and in light of its duty to supervise the financial policies of the state (Gov. Code, § 13070), the relief requested by the agency, subvention of state funds, would have affected the interests of the department. Thus, the department was a real party in interest, and should have been named in the agency's writ petition. It was an indispensable party under Code Civ. Proc., § 389, subd. (a), and it had an interest against the success of the agency on its subvention claim (Code Civ. Proc., § 387, subd. (a)). Also, a ruling in the department's absence could have impaired its ability to protect its interests in the subject matter of the action (Code Civ. Proc., § 387, subd. (b)). Redevelopment Agency v California Comm'n on State Mandates (1996, 4th Dist) 43 Cal App 4th 1188.

The Legislative Counsel's determination that Gov. Code, § 29550, which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, imposed a state mandated local program was not determinative of the ultimate issue whether the enactment constituted a state mandate under Cal. Const., art. XIII B, § 6. The legislative scheme contained in Gov. Code, § 17500 *et* seq., makes clear that this issue is to be decided by the State Commission on Mandates. The statutory scheme contemplates that the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists. City of San Jose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr 2d 521.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under Code Civ. Proc., § 1085, was not an improper vehicle for challenging the commission's position. Mandamus under Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under Code Civ. Proc., § 1085, as one brought under Code Civ. Proc., § 1094.5, and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

Cal Gov Code § 17556 (Copy w/ Cite) Pages: **4**

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Citation: **cal. govt.** code sec. 17556

Cal Gov Code § 17556

GOVERNMENT CODE
TITLE 2. Government of the State of California
DIVISION 4. Fiscal Affairs
PART 7. State-Mandated Local Costs
CHAPTER 4. Identification and Payment of Costs Mandated by the State
ARTICLE 1. Commission Procedure

◆ **GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 17556 (2004)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT ◆ LEXSEE 2004 Cal. ALS *895* -- See section 14, effective 01/01/2005.

§ 17556. Criteria for not finding costs mandated by state

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an

amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

HISTORY:

Added Stats 1984 ch 1459 § 1. Amended Stats 1986 ch 879 § 4; Stats 1989 ch 589 § 1.

NOTES:

AMENDM'ENTS:

1986 Amendment:

(1) Deleted subdivision designation (a) at the beginning of the section; (2)redesignated former subds (a)(1)-(a)(7) to be subds (a)-(9); and (3) deleted former subd (b) which read: "(b) The commission may find costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, solely with regard to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975. However, such a finding shall not constitute costs mandated by the state as defined in Section 17514."

1989 Amendment:

Added ", or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" in subd (e).

CROSS REFERENCES:

Untimely filing of reimbursement claims: Gov C § 17568.

NOTES OF DECISIONS

In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by Cal Const Art XIII B § 6, to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (H & S C § 25500 et seq.), the trial court properly found that Gov C § 17556, subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was constitutional. Cal Const Art XIII B was intended to apply to taxation and was not intended to reach beyond it, as is apparent from the language of the measure and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and, read in textual and historical contexts, requires subvention only when the cost in question can be recovered solely from tax revenues. Section 17556, subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, Gov C § 17556, subd. (d), is facially constitutional under Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

State reimbursement statute, Gov C § 17556(d) was facially constitutional because it did not create a new exception to reimbursement as required by Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

Gov C § 17556(d) provides that the commission shall not find costs mandated by the state if, after a hearing, the commission finds that the local government has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

Even if a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constituted a new program for

state-mandated costs purposes, the costs were not reimbursable, since the water districts had the authority to levy fees to pay for the program (Wat C § 35470). Rev & Tax C former § 2253.2 (now Gov C § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precluded a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. Connell v Superior Court (1997, 3rd Dist) 59 Cal App 4th 382, 69 Cal Rptr 2d 231.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constituted a state-mandated program for which water districts were entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev & Tax C former § 2253.2 (now Gov C § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs had such authority. The board's finding to the contrary was thus not binding. Connell v Superior Court (1997, 3rd Dist) 59 Cal App 4th 382, 69 Cal Rptr 2d 231.

Even if the hearing procedures set forth in Ed C § 48918 constitute a new program or higher level of service, this statute does not trigger any right to reimbursement because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis; all hearing costs incurred under § 48918, triggered by a school district's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal law, and hence all such costs are nonreimbursable under Gov C § 17556(c). San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

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Cal Gov Code § 17556

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GOVERNMENT CODE
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Cal Gov Code § 17556 (2004)

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§ 17556. Criteria for not finding costs mandated by state

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an

amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

HISTORY:

Added Stats 1984 ch 1459 § 1. Amended Stats 1986 ch 879 § 4; Stats 1989 ch 589 § 1.

NOTES:

AMENDMENTS:

1986 Amendment:

(1) Deleted subdivision designation (a) at the beginning of the section; (2)redesignated former subds (a)(1)-(a)(7) to be subds (a)-(9); and (3) deleted former subd (b) which read: "(b) The commission may find costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, solely with regard to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975. However, such a finding shall not constitute costs mandated by the state as defined in Section 17514."

1989 Amendment:

Added ", or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" in subd (e).

CROSS REFERENCES:

Untimely filing of reimbursement claims: Gov C § 17568.

NOTES OF DECISIONS

In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by Cal Const Art XIII B § 6, to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (H & S C § 25500 et seq.), the trial court properly found that Gov C § 17556, subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was constitutional. Cal Const Art XIII B was intended to apply to taxation and was not intended to reach beyond it, as is apparent from the language of the measure and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and, read in textual and historical contexts, requires subvention only when the cost in question can be recovered solely from tax revenues. Section 17556, subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, Gov C § 17556, subd. (d), is facially constitutional under Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

State reimbursement statute, Gov C § 17556(d) was facially constitutional because it did not create a new exception to reimbursement as required by Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

Gov C § 17556(d) provides that the commission shall not find costs mandated by the state if, after a hearing, the commission finds that the local government has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

Even if a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constituted a new program for

state-mandated costs purposes, the costs were not reimbursable, since the water districts had the authority to levy fees to pay for the program (Wat C § 35470). Rev & Tax C former § 2253.2 (now Gov C § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precluded a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. Connell v Superior Court (1997, 3rd Dist) 59 Cal App 4th 382, 69 Cal Rptr 2d 231.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constituted a state-mandated program for which water districts were entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev & Tax C former § 2253.2 (now Gov C § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs had such authority. The board's finding to the contrary was thus not binding. Connell v Superior Court (1997, 3rd Dist) 59 Cal App 4th 382, 69 Cal Rptr 2d 231.

Even if the hearing procedures set forth in Ed C § 48918 constitute a new program or higher level of service, this statute does not trigger any right to reimbursement because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis; all hearing costs incurred under § 48918, triggered by a school district's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal law, and hence all such costs are nonreimbursable under Gov C § 17556(c). San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

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TOC: Deerings California Code Annotated, Court Rules and ALS > /.../ > ARTICLE 1. Commission Procedure > § 17556. Criteria for not finding costs mandated by state
Citation: cal. govt. code sec. 17556
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Date/Time: Wednesday, December 1,2004 - 6:59 PM EST

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West's Ann.Cal.Gov.Code § 65584

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Chapter 3. Local Planning (Refs & Annos)
Article 10.6. Housing Elements (Refs & Annos)

§ 65584. Share of city or county of regional housing needs; determination and distribution; revision

(a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties that already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and in consultation with each council of governments, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The council of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a

subregional agency established by the council of governments. in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). If the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c)(1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be. shall accept the proposed revision. modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographical restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grants **a** revised allocation pursuant to paragraph (l), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of **a** county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount that will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above noder rate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction. taking into consideration the criteria of subdivision (a).

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d)(1) In the event an incorporation of a new city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under this section, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments: to consider the facts, data, and methodology presented by both parties and make the revised determination. The revised determination shall be made within one year of the incorporation of the new city based upon the methodology described in subdivision (a) and shall reallocate a portion of the affected county's share of regional housing needs to the new city. The revised determination shall neither reduce the total regional housing need nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.

(2) Except as provided in paragraph (3), any ordinance: policy, or standard of a city or county that directly limits, by number, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(3) Paragraph (2) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged to interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

CREDIT(S)

(Added by Stats.1980, c. 1143, p. 3697, § 3. Amended by Stats.1984, c. 1684, § 1; Stats.1989, c. 1451, § 2; Stats.1990, c. 1441 (S.B.2274), § 4; Stats.1998, c. 796 (A.B.438), § 4; Stats.2001, c. 159 (S.B.662), § 121;

West's Ann.Cal.Gov.Code § 65584

Stats.2003, c. 760 (A.B.668), § 1.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update
1998 Legislation

For statement of legislative intent of Stats.1998, c.796, see Government Code § 65400.

2001 Legislation

Subordination of legislation by Stats.2001, c. 159 (S.B.662), to other 2001 legislation, see Historical and Statutory Notes under Business and Professions Code § 27.

1997 Main Volume

Section 5 of Stats.1989, c. 1451, provides:

"Section 3.5 of this bill incorporates amendments to Section 63384 of the Government Code [Section 3 amends Section 655841 proposed by both this bill and SB 966 [vetoed]. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 65584 of the Government Code, and (3) this bill is enacted after SB 966, in which case Section 2 of this bill shall not become operative."

Amendment of this section by § 4.5 of Stats.1990, c. 1441, failed to become operative under the provisions of § 9 of that Act.

CROSS REFERENCES

Housing for persons of low income and persons and families of moderate income, use of tax allocations, see Government Code § 8191.

LAW REVIEW AND JOURNAL COMMENTARIES

In defense of inclusionary zoning: Successfully creating affordable, housing. 36 U.S.F.L.Rev. 971 (2002).

Does the Costa-Hawkins Act prohibit local inclusionary zoning programs? Nadia I. El Mallakh, 89 Cal.L.Rev. 1847 (December 2001).

Why our fair share housing laws fail. Ben Field, Santa Clara L.Rev. 35 (1993).

LIBRARY REFERENCES

1997 Main Volume

Planning For Affordable Housing: What Do the 90s Hold. 1 CEB Land Use Forum 9.
Significant new state legislation enacted in 1990. CEB Real Prop L Rep Vol. 14 No. 2 p 45.

RESEARCH REFERENCES

Encyclopedias

West's Ann.Cal.Gov.Code § 65584

CA Jur. 3d Zoning and Other Land Controls § 29, Housing Element Generally.

CA Jur. 3d Zoning and Other Land Controls § 59, Administration of General Plans.

Treatises and Practice Aids

Miller and Starr California Real Estate § 25:177, Provisions Regarding the Housing Element.

NOTES OF DECISIONS

1. Existing and projected housing needs

Determination of a locality's share of regional housing needs by a council of governments must include both the existing and projected housing needs of the locality. 70 Ops.Atty.Gen. 231, 9-29-87.

2. Availability of sites

As regards determination of a locality's share of regional housing needs by a council of governments, the availability of suitable housing sites must be considered based not only upon existing zoning ordinances and land use restrictions of the locality, but also upon the potential for increased residential development under alternative zoning ordinances and land use restrictions. 70 Ops.Atty.Gen. 231, 9-29-87.

3. Income classifications

Income categories of Sections 6910-6932 of Title 25 of the California Administrative Code must be used by a council of governments when determining a locality's share of regional housing needs. 70 Ops.Atty.Gen. 231, 9-29-87.

4. Review

In determining whether local open space ordinance accommodated regional housing interests, trial court was not required to consider cumulative effect of ordinance and town's other land use restrictions. Northwood Homes, Inc. v. Town of Moraga (App. 1 Dist. 1989) 265 Cal.Rptr. 363, 216 Cal.App.3d 1197. Zoning And Planning ⚿ 76

Evidence was sufficient to establish that local open space ordinance had only minimal effect on regional housing supply in determining whether ordinance accommodated regional housing interests; evidence indicated that ordinance would result in reduction of only 113 housing units. Northwood Homes, Inc. v. Town of Moraga (App. 1 Dist. 1989) 265 Cal.Rptr. 363, 216 Cal.App.3d 1197. Zoning And Planning ⚿ 647.1

West's Ann. Cal. Gov. Code § 65584, **CA GOVT § 65584**

West's Ann.Cal.Gov.Code § 65584

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Chapter 3. Local Planning (Refs & Annos)
Article 10.6. Housing Elements (Refs & Annos)

→ § 65584.1. Costs in distributing regional housing needs; fees charged to local governments

Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations under this article. A city, county: or city and county may charge a fee, including, but not limited to, a fee pursuant to Section 65104 to support the work of the planning agency pursuant to this article, and to reimburse it for the cost of any fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose any fee pursuant to Section 66016. This section is declaratory of existing law.

CREDIT(S)

(Added by Stats.2004, c. 227 (S.B.1102), § 58, eff. Aug. 16, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update
2004 Legislation

Section 109 of Stats.2004, c. 227 (S.B.1102), provides:

For uncodified sections and urgency effective provisions relating to Stats.2004, c. 227 (S.B.1102), see Historical and Statutory Notes under Business and Professions Code § 352.

West's Ann. Cal. Gov. Code § 65584.1, **CA GOVT § 65584.1**

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West's Ann.Cal.Gov.Code § 65584.2

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Division 1. Planning and Zoning (Refs & Annos)
Chapter 3. Local Planning (Refs & Annos)
Article 10.6. Housing Elements (Refs & Annos)

→ § 65584.2. **Share of regional housing need; review or appeal**

A local government may, but is not required to, conduct a review or appeal regarding allocation data provided by the department or the council of governments pertaining the locality's share of the regional housing need or the submittal of data or information for a proposed allocation, as permitted by this article.

CREDIT(S) (Added by Stats.2004. c. 227 (S.B.1102), § 59, eff. Aug. 16, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update
2004 Legislation .

For uncodified sections and urgency effective provisions relating to Stats.2004, c. 227 (S.B.1102), see Historical and Statutory Notes under Business and Professions Code § 352.

West's Ann. Cal. Gov. Code § 65584.2, **CA GOVT** § 65584.2

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PROOF OF SERVICE

I, Cynthia Pacheco, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 865 South Figueroa Street, 29th Floor, Los Angeles, California 90017. On December 1, 2004, I served a copy of the within document(s):

Authorities Cited in Opening Brief of Southern California Association of Governments

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

Eric D. Feller, Esq.
Commission State Mandates
980 9th Street, #300
Sacramento, CA 95814
Eric.feller@csm.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 1, 2004, at Los Angeles, California.

Cynthia Pacheco

Cynthia Pacheco